

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

MELVIN NOLAND COLES,

Plaintiff,

v.

Civil Action No. 3:12cv292

OAKWOOD MORTGAGE LLC,
et al.,

Defendants.

ORDER

By Order entered herein on August 17, 2012, the following motions were referred to Magistrate Judge David J. Novak for report and recommendation:

(A) DEFENDANT SETH E. TWERY, P.C.'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT OR IN THE ALTERNATIVE MOTION TO TRANSFER VENUE (Docket No. 6);

(B) DEFENDANTS OAKWOOD ACCEPTANCE CORP, LLC, THE BANK OF NEW YORK MELLON, VANDERBILT MORTGAGE INC. and JP MORGAN CHASE BANK'S MOTION TO TRANSFER VENUE (Docket No. 24); and

(C) DEFENDANTS OAKWOOD ACCEPTANCE CORP, LLC, THE BANK OF NEW YORK MELLON, VANDERBILT MORTGAGE INC. AND JP MORGAN CHASE BANK'S MOTION TO DISMISS (Docket No. 25).

Having reviewed the REPORT AND RECOMMENDATION of the Magistrate Judge (Docket No. 53) entered herein on October 11, 2012, the REQUEST FOR CORRECTION AND CLARIFICATION TO U.S. MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION PURSUANT TO 28 U.S.C. § 636(b)(1)(C) (Docket No. 54), the OBJECTIONS TO RECOMMENDATIONS OF REPORT (Docket No. 55) filed by the plaintiff, and having considered the record and the REPORT AND RECOMMENDATION, it is hereby ORDERED that:

(1) The OBJECTIONS TO RECOMMENDATIONS OF REPORT (Docket No. 55) filed by the plaintiff are overruled;

(2) The REPORT AND RECOMMENDATION of the Magistrate Judge (Docket No. 53) is ADOPTED to the extent that it rightly concludes that the Court lacks subject matter jurisdiction because there is not complete diversity of citizenship and because none of the federal statutes cited in the Complaint, as having been violated, provides a cause of action, and thus concludes that the motions made under Fed. R. Civ. P. 12(b)(1) should be granted;

(3) The REQUEST FOR CORRECTION AND CLARIFICATION TO U.S. MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION PURSUANT TO 28 U.S.C. § 636(b)(1)(C) (Docket No. 54) is denied for lack of jurisdiction;

(4) DEFENDANT SETH E. TWERY, P.C.'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT OR IN THE ALTERNATIVE MOTION TO TRANSFER VENUE (Docket No. 6) is granted with regard to the Motion to Dismiss and denied as moot with regard to the Motion to Transfer Venue;

(5) DEFENDANTS OAKWOOD ACCEPTANCE CORP, LLC, THE BANK OF NEW YORK MELLON, VANDERBILT MORTGAGE INC. AND JP MORGAN CHASE BANK'S MOTION TO TRANSFER VENUE (Docket No. 24) is denied as moot;

(6) DEFENDANTS OAKWOOD ACCEPTANCE CORP, LLC, THE BANK OF NEW YORK MELLON, VANDERBILT MORTGAGE INC. AND JP MORGAN CHASE BANK'S MOTION TO DISMISS (Docket No. 25) is granted;

(7) DEFENDANTS OAKWOOD ACCEPTANCE CORP, LLC, THE BANK OF NEW YORK MELLON, VANDERBILT MORTGAGE INC. AND JP MORGAN CHASE BANK'S MOTION TO DISMISS (Docket No. 12) is denied as moot;

(8) DEFENDANTS BANK OF OAKWOOD ACCEPTANCE CORP, LLC, THE BANK OF NEW YORK MELLON, VANDERBILT MORTGAGE INC. AND JP MORGAN CHASE BANK'S MOTION TO TRANSFER VENUE (Docket No. 13) is denied as moot;

(9) PLAINTIFFS' [sic] MOTION FOR SUMMARY JUDGMENT (Docket No. 50) is denied as moot; and

(10) The Complaint is dismissed without prejudice for lack of subject matter jurisdiction.

The issues are adequately addressed by the briefs, and oral argument would not materially aid the decisional process.

This Order may be appealed by the plaintiff. Any appeal from this decision must be taken by filing a written notice of appeal with the Clerk of the Court within thirty (30) days of the date of entry

hereof. Failure to file a timely notice of appeal may result in the loss of the right to appeal.

It is so ORDERED.

/s/ REP
Robert E. Payne
Senior United States District Judge

Richmond, Virginia
Date: November 1, 2012